

# SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Bob Scales  
Compliance Coordinator

DATE: February 12, 2013

FROM: Kathryn Olson, Director  
Office of Professional Accountability

SUBJECT: Settlement Agreement Provision Regarding Review of Retaliation Policy

Paragraph 166 of the Settlement Agreement provides:

The City and SPD will revise their policies, as necessary, to clarify that prohibited retaliation includes discouragement, intimidation, coercion, or adverse action against any person who reports misconduct, makes a misconduct complaint, or conducts or cooperates with an investigation of misconduct. Within 180 days of the Effective Date, and annually thereafter, the City, in consultation with the OPA Auditor, will review SPD's anti-retaliation policy and its implementation.

The subject of retaliation is covered in two sections of the Seattle Police Manual:

## 5.080 – Harassment in the Workplace

G. Retaliation: Punitive actions taken against an employee because they have complained about harassment, given a statement about harassment, or otherwise supported a harassment complaint. Retaliation may potentially include: transfers or discharges; changes in job duties, assignments, privileges, or performance evaluations; laughing at, ignoring, or failing to take seriously an employee who experiences harassment; acting in ways that blame the victim of harassment for causing the problem; continuing or escalating harassing behavior after a coworker has objected to that behavior.

## 5.002 – Public and Internal Complaint Process

H. No employee shall retaliate against any person who initiates or provides information pursuant to any citizen or internal complaint, or against any person who provides information or testimony at a Department hearing, because of such person's participation in the complaint process. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.

Following consultation with the OPA Auditor and research conducted by both of us, it is recommended that 5.002 be amended, as follows:

No employee shall retaliate against any person who initiates or provides information or testimony pursuant to any complaint of SPD employee misconduct, regardless of the context in which the complaint is made, because of such person's participation in the complaint process. Prohibited retaliation includes discouragement, intimidation, coercion, or adverse action against any person who reports misconduct, makes a misconduct complaint, or conducts or cooperates with an investigation of misconduct. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.

In addition to revising the original 5.002.H language, I inserted language from Paragraph 166 of the Settlement Agreement. Though the original language would have covered discouragement, intimidation, etc., any concerns are addressed by making coverage explicit.

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However, the Auditor and I want to note a couple of issues. Since section 5.002 is concerned with the public and internal complaint process, some might read the retaliation clause as being limited to retaliation for filing OPA complaints. I think it is intended to be broader, but there have been relatively few complaints of retaliation so little opportunity to explore the range of the application. The new language is intended to cover retaliation for participation in OPA, a hearing, litigation, or otherwise. There are potential collective bargaining implications with the changes made.

Second, we should consider whether the language is broad enough to cover a situation where a person has not actually made a complaint or provided information or testimony related to a complaint, but does something to offend an officer (maybe criticizes him in litigation or in a public meeting) and the officer takes adverse action in response. The person has not engaged in "protected activity" because there is no complaint or information or testimony related to a complaint, but the response is intentionally adverse. I believe that such a situation would be misconduct under other SPD Manual provisions, but the Auditor suggested SPD might want to address the ambiguity more directly.

The SPD Audit, Policy and Research Section (APRS) is exploring the idea of folding the policies which cover EEO Complaints and Investigations (5.040) and Harassment in the Workplace (5.080) into the policy on Public and Internal Complaint Process (5.002). Though the recommended changes incorporated above in 5.002 are intended to cover an allegation of retaliation in response to a harassment complaint, I recommend leaving the harassment retaliation policy as is while APRS continues with its revisions.